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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,998	08/22/2002	Olivier Bervard Carli	CU-2782 RJS	6943

7590 05/12/2005
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EXAMINER

BAXTER, JESSICA R

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/009,998	CARLI, OLIVIER BERVARD	
	Examiner	Art Unit	
	Jessica R Baxter	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 8 and 11 is/are rejected.
- 7) ☒ Claim(s) 4, 7, 9 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03262002 03 29 2002
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "16" has been used to designate both the bottom and a notch. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 7, 9 and 10 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,716,356 to Biedermann et al.

Biedermann discloses an implant comprising: - a first assembly comprising: a fixing body (104) for a bracing rod (9), said body being arranged to present a reception housing for receiving an anchor screw head (103), thereby defining a ball joint between the anchor screw and the fixing body; a positioning ring (111) for interposing between the anchor screw head and the bracing rod; and a second assembly comprising a nut system (10,11) for fastening the bracing rod to the fixing body, the implant being characterized in that - the first assembly has a positioning ring mounted in the fixing body with freedom to move in limited linear displacement (limited by crimping 114, 115) and allowing the body and the anchor screw to rotate freely relative to each other in the absence of the bracing rod and - the second assembly has a nut system adapted on being screwed onto the body to bear against the bracing rod and move the positioning ring in linear manner so that on being tightened it clamps the bracing rod to between said system and the positioning ring and also clamps the anchor screw (102) between the positioning ring (111) and the fixing body (104), and wherein the fixing body has two side branches (108,109) defining a channel between them that opens out on either side of the body in order to receive the bracing rod (FIG. 19 and 20), the side branches having outside walls that are threaded; and the fastening system comprises a nut adapted to be screwed onto the outside threaded walls of the side branches (11), the nut being fitted in its diametral zone with a shoe (10) mounted to rotate freely and designed to come to bear against the bracing rod so that when tightened it clamps said shoe and the positioning ring (Column 6 lines 61-67).

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5. Claims 1, 3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,885,286 to Sherman et al.

Sherman discloses an implant comprising: - a first assembly comprising: a fixing body (12) for a bracing rod, said body being arranged to present a reception housing for receiving an anchor screw bead (23), thereby defining a ball joint between the anchor screw and the fixing body; a positioning ring (13) for interposing between the anchor screw head and the bracing rod (55); and a second assembly comprising a nut system (14) for fastening the bracing rod to the fixing body, the implant being characterized in that - the first assembly has a positioning ring mounted in the fixing body with freedom to move in limited linear displacement (Column 7 lines 31-42) and allowing the body and the anchor screw to rotate freely relative to each other in the absence of the bracing rod (Column 6 line 60-Column 7 line 10) and - the second assembly has a nut system adapted on being screwed onto the body to bear against the bracing rod and move the positioning ring in linear manner so that on being tightened it clamps the bracing rod to between said system and the positioning ring and also clamps the anchor screw between the positioning ring and the fixing body (FIG. 2); wherein the positioning ring presents a concave surface complementary to the bracing rod and is guided to slide in such a manner that the concave surface defines a portion of the reception channel for receiving the bracing rod so as to ensure that the bracing rod is positioned automatically between the side branches and on the positioning ring; and wherein the positioning ring presents a through opening out between the side walls and over the head of the anchor screw in which there is provided a blind hole suitable for receiving a screw-driver tool passing through the opening (bore 45); wherein the fixing body comprises: a fixing head on which: there stand two side branches (31, 32) and in which there

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is arranged a cavity opening out at one or between the side branches and opening out at its opposite end; - the positioning ring mounted to move with limited displacement inside the cavity with its surface for receiving the bracing rod opening between the two side branches (Column 7 lines 31-63); - the head of the anchor screw mounted at least in part inside the cavity so that the positioning ring is interposed between said head and the body (FIG. 2); and - a closure cup fixed on the fixing body on its inside face to close the cavity and having the anchor screw passing therethrough (body 30).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biedermann et al. '356 in view of WO 98/41159 to Alby.

Biedermann discloses the claimed invention except for the shoe being adapted to cooperate with the nut to define on either side of the shoe two gaps. Alby teaches that the shoe may be provided with gaps to allow the shoe to slide between the two branches and to facilitate gripping of the shoe when it is inserted into the assembly. (Page 4, lines 12-22). IT would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the shoe of Biedermann with gaps on either side in order to facilitate gripping while the shoe is being inserted into the assembly.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



jrb

Jessica R Baxter
Examiner
Art Unit 3731



GLENN K. DAWSON
PRIMARY EXAMINER